

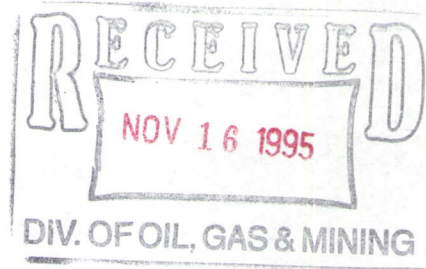
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November 15, 1995

James W. Carter, Director  
Division of Oil, Gas & Mining  
Department of Natural Resources  
STATE OF UTAH  
355 West North Temple  
3 Triad Center, #350  
Salt Lake City, Utah 84180-1203



RE: Parley's Canyon Aggregate Company-  
Sand, Gravel and Rock Aggregate Exemption

Dear Jim:

Following up on our telephone conversation of yesterday, enclosed is a copy of Joe Rust's article for the AGC regarding the Utah Supreme Court's decision in the Larson Limestone case. On behalf of our client, Parley's Canyon Aggregate, we appreciate your willingness to look at the question of the scope of the rock aggregate exemption in light of the Larson case as it may apply to the operations at Parley's Canyon Aggregate's property and to other producers along the Wasatch Front.

Thanks again for your consideration; if you have any questions, or if I can provide you with additional information pertaining to our client's property and the operations thereon, please give me a call.

Very truly yours,

A handwritten signature in dark ink, appearing to read "A. John Davis".

A. John Davis

AJD:jw  
Enclosure  
cc: Ira Sachs

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## AGC PREVAILS (SOMEWHAT) BEFORE THE UTAH SUPREME COURT

Larson Limestone, a sand and gravel operator in Utah County, decided to challenge an order by the State Division of Oil, Gas and Mining (DOGM) before the Utah Supreme Court. DOGM had claimed that Larson's sand and gravel operations came under DOGM's control and under the requirements of the Utah Mined Land Reclamation Act because the sand, gravel, and rock aggregate coming from Larson's pit was processed from hard rock as opposed to alluvial deposits. Larson Limestone claimed it did not come under DOGM jurisdiction because the Act exempted all sand, gravel, and rock aggregate. Larson also claimed that the high grade limestone it removed, which admittedly was a mineral, was removed from an area consisting of less than five acres, which is specifically exempted under the Act. The matter was submitted to the Board of Oil, Gas and Mining, which ruled that because Larson's sand, gravel, and rock aggregate was taken from hard rock rather than from alluvial deposits, DOGM had jurisdiction over the Larson Limestone operation, regardless of whether the high quality limestone came from less than five acres. Larson appealed to the Utah Supreme Court. At this point AGC determined to join the case as amicus curia to argue against the position taken by DOGM.

AGC's argument before the Utah Supreme Court was that courts traditionally have held sand and gravel not to be a mineral. (Sand and gravel is generally defined as material which before extraction has no more value than the material around it. AGC then argued that the exclusion of sand and gravel from the definition of mineral was considerably bolstered with the amendments to the Mined Land Reclamation Act in 1987 (basically at the instance of AGC members) which provided for a specific exemption of sand, gravel, and rock aggregate both in the definition of mineral deposit as well as in the definition of mining.<sup>1</sup>

At oral argument before the Supreme Court, much of the argument as well as the questions raised by the Court centered on the five acre exemption. AGC's counsel focused his argument on the definition of sand, gravel and rock aggregate not depending on whether the material being removed was alluvial or not. But the Court passed over that point rather quickly. Ultimately the Supreme Court decision turned on five acre exemption point. The Court ruled that because more than five acres were being disturbed in order to get to the admitted mineral, consisting of high grade limestone, Larson could not claim to be within the five acre exemption. In making this ruling, the Supreme Court initially said that it was not ruling on the definition of sand, gravel and rock aggregate under the Act because it did not need to get to that issue.

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<sup>1</sup> The specific language says:

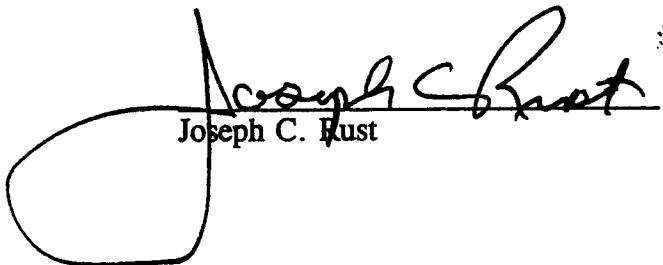
Utah Code Ann. § 40-8-4(3)(b) "Deposit" or "mineral deposit" excludes sand, gravel, rock aggregate, water, geothermal steam, and oil and gas . . ."

Utah Code Ann. § 40-8-4(8)(b) "Mining operation" does not include: the extraction of sand, gravel and rock aggregate . . ."

Despite making its ruling turn on the five acre exemption, the Supreme Court, however, does make it fairly clear in its opinion which way it would rule if the definition of sand, gravel and rock aggregate came before it. The Court started the opinion by assuming that for the purposes of its decision the low grade limestone, which was extracted from hard rock, was sand, gravel and rock aggregate as exempted by the Act. The Court then made the assumption that "a significant part of Larson's operation is a rock aggregate business." By the end of the opinion the Court had gone from assuming the removal of the low grade limestone was rock aggregate exempted under the Act to accepting it as an establishing fact. The court concluded its opinion by saying: "The facts demonstrate that Larson's operation consists of both production of rock aggregate and extraction of high quality limestone and that the disturbed areas are attributable to both."

Based on the issues before it and the way that the facts were stated, there is no doubt that if the sole issue had been whether sand, gravel and rock aggregate which is processed from hard rock or non-alluvial material is covered by the exemption in the Act, the Supreme Court would have said yes. In other words, the Supreme Court appears to have removed forever DOGM's claimed distinction between alluvial and non-alluvial material for the purpose of the exemption of sand, gravel, and rock aggregate found in the Utah Mined Land Reclamation Act.

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Joseph C. Rust